

KEYWORD: Foreign Influence; Personal Conduct

DIGEST: Applicant, a United States citizen, has spent all but the first two years of his life in the United States. He has immediate family members who are citizens and residents of Israel. None of them has ever been employed by the Government of Israel or is in a position to be exploited by Israel in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant's extremely strong attachment to the United States and his minimal ties to Israel makes it highly unlikely that he would respond favorably to any efforts to act against United States' interests. In a Security Clearance Application (SCA) supplied to the Government in March 2003, Applicant denied that he had ever had a clearance or access authorization denied or revoked, which was correct at the time that he completed the SCA. Mitigation has been shown. Clearance is granted.

CASENO: 04-01630.h1

DATE: 12/06/2005

DATE: December 6, 2005

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 04-01630

**DECISION OF ADMINISTRATIVE JUDGE**

**MARTIN H. MOGUL**

**APPEARANCES**

**FOR GOVERNMENT**

**FOR APPLICANT**

David H. Shapiro, Esq.

**SYNOPSIS**

Applicant, a United States citizen, has spent all but the first two years of his life in the United States. He has immediate family members who are citizens and residents of Israel. None of them has ever been employed by the Government of Israel or is in a position to be exploited by Israel in a way that could force Applicant to choose between loyalty to these family members and his loyalty to the United States. Applicant's extremely strong attachment to the United States and his minimal ties to Israel makes it highly unlikely that he would respond favorably to any efforts to act against United States' interests. In a Security Clearance Application (SCA) supplied to the Government in March 2003, Applicant denied that he had ever had a clearance or access authorization denied or revoked, which was correct at the time that he completed the SCA. Mitigation has been shown. Clearance is granted.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR), dated January 26, 2005, to Applicant which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an Administrative Judge to determine whether clearance should be granted, continued, denied, or revoked.

On February 16, 2005, Applicant submitted a signed and sworn response to the SOR, and he requested a clearance decision based on a hearing record.

On May 16, 2005, this case was assigned to this Administrative Judge to conduct a hearing and issue a written decision. A Notice of Hearing was issued to the parties on August 22, 2005, and the hearing was held on September 13, 2005.

At the hearing, Department Counsel offered six documentary exhibits (Exhibits 1 through 6), and no witnesses were called. Applicant, through counsel, offered nine documentary exhibits, (Exhibits A through I) and offered his own

testimony and that of four other witnesses. The transcript (Tr) was received on September 26, 2005.

## FINDINGS OF FACT

In the SOR, the Government alleges that a security risk may exist under Adjudicative Guideline B and Guideline E of the Directive. The SOR contains six allegations, 1.a. through 1.f., under Guideline B (Foreign Influence) and one allegation, 2.a., under Guideline E (Personal Conduct). In his response to the SOR, Applicant admits all of the allegations under Guideline B and denies the one allegation under Guideline E.. These allegations are incorporated as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's Answer to the SOR, the documents and the live testimony, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 43 year old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector. He received a Master of Science degree in electrical engineering from a United States university in 1998.

Applicant was born in Israel. In 1964, at the age of 2, Applicant and his family left Israel and came to the United States. Applicant has lived in this country permanently since that time, and he became a naturalized United States citizen in 1977, the same time that his parents became United States citizens (Tr at 36).

Applicant's wife was born in the United States citizen and is a U.S. citizen. They have four children, who were born in the United States and are also United States citizens (Tr at 50-51). He also has one brother who resides in the United States, and is a U.S. citizen.

Applicant previously had an Israeli passport, but he has returned it to the Israeli Government. He has been making a good-faith attempting for three years to renounce his Israeli citizenship, but because of apparent bureaucratic problems, he has not yet been successful. He is still pursuing this attempt, and based on correspondence from the Israeli Government, he hopes to be successful in the near future (Tr at 54-60, Exhibit B).

### **Paragraph 1 Guideline B (Foreign Influence)**

Applicant's father, sister and one brother live in Israel and are dual Israeli and United States citizens. He also has a brother-in-law and a sister-in-law who are residents and citizens of Israel. None of Applicant's relatives has ever been employed by the Government of Israel.

Applicant has traveled to Israel in 1979, 1986, 1992, 1997, 2001, and 2005. They were all casual trips, generally to see his family. In one case he went to Israel for his mother's funeral, and the most recent time it was to celebrate the Bar Mitzvah of his two sons (Tr at 37-38).

Applicant has a potential financial interest in a property in Israel, owned by his father and estimated to be worth \$100,000. This is divided between him and his three siblings and 12 grandchildren. He his net worth in the United States is worth far more including his home that he estimates to be worth \$850,000.

Applicant expressed strong feelings for his preference for the United States over Israel, based on several factors including the fact that he has lived here for all but the first two years of his life, and his wife and four children are United States born citizens. He also testified that he has voted in United States elections but never in Israeli elections, and he has no contact with anyone in Israel except his immediate family(Tr at 98-99).

### **Paragraph 2 Guideline E (Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has exhibited questionable judgment, untrustworthiness, unreliability, and unwillingness to comply with rules and regulations.

Applicant completed a SCA on March 4, 2003. Question #32 asks, "To your knowledge have you ever had a clearance or access authorization denied, suspended or revoked, or have you ever been debarred from Government employment?" Applicant answered "No" to this question. The evidence shows that Applicant was ultimately denied access to Sensitive Compartmented Information (SCI), but it was not until June 2003, which was three months after he completed the SCA.

A letter dated March 7, 2003, from the agency making the decision about his access, indicated the decision was still under formal review (Exhibit A). On March 13, 2003, Applicant submitted a letter to the agency, which had requested additional information. Since he was still submitting information after he completed the SCA, he did not believe that a final decision had been made and therefore, he believed he correctly asserted in his SCA that he had not had a clearance

denied or access authorization denied, suspended or revoked (Tr at 62-66).

## **Mitigation**

Two witnesses, who have known Applicant in an employment status, testified at the hearing on behalf of Applicant. They described him in the most positive terms and neither one had any reservations about recommending him for a position of trust.

Another witness, who has known Applicant as a friend and religious study partner, testified as to Applicant's honesty, integrity, and generosity. Finally, Applicant's wife testified as to her husband's feelings for the United States and their desire to always remain in this country.

Finally, Applicant submitted a letter of reference on his behalf, from his former supervisor, in which he stated Applicant always performed his job efficiently and honestly (Exhibit G).

## **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines that must be carefully considered in evaluating an individual's security eligibility and making the overall common sense determination required. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

The adjudication process is based on the whole person concept. All available, reliable information about the person, past and present, is to be taken into account in reaching a decision as to whether a person is an acceptable security risk.

Each adjudicative decision must also include an assessment of: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, and the extent of knowledgeable participation; (3) how recent and frequent the behavior was; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct;

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence (*See* Directive, Section E2.2.1. of Enclosure 2).

## **BURDEN OF PROOF**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish his security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance. Assessment of an applicant's fitness for access to classified information requires evaluation of the whole person, and consideration of such factors as the recency and frequency of the disqualifying conduct, the likelihood of recurrence, and evidence of rehabilitation.

A person who seeks access to classified information enters into a fiduciary relationship with

the U.S. Government that is predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability, or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

## **CONCLUSIONS**

**Paragraph 1 Guideline B (Foreign Influence)**Based on the evidence of record, the Government has established an initial reason to deny Applicant a security clearance because of Guideline B (Foreign Influence) . Applicant's father, sister and brother are citizens and residents of Israel. The Israel citizenship and residency of members of Applicant's immediate family creates the potential for foreign influence that could result in the compromise of classified information because it makes Applicant potentially vulnerable to coercion, exploitation, or pressure. The possession of such a tie raises a security concern sufficient to require Applicant to present evidence in rebuttal, extenuation, or mitigation sufficient to meet his burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him. This Applicant has done.

The evidence of these family members, who are citizens and residents of Israel, comes within Disqualifying Condition (DC) E2.A2.1.2.1. Based on the nature of the overall record and the totality of the evidence, including: the lack of government involvement of Applicant's family in Israel, Applicant's long history since coming to the United States, where he has lived all but the first two years of his life, his ties to all of his family members, especially his wife and four children who are United States citizens and residents, and his testimony about his feelings concerning the United States,

I have determined that his father, sister, and brother in Israel do not constitute an unacceptable security risk, and Mitigating Conditions (MC) E2.A2.1.3.1. applies.

Applicant does have a potential financial interest in his father's condominium, which comes under DC E2.A2.1.2.8., but the amount is small. I conclude that C E2.A2.1.3.5. applies because the financial interests are not significant enough to cause Applicant to do anything which would be contrary to the interests of the United States.

After considering all of the evidence of record on these issues, I conclude that the mitigating evidence substantially outweighs the evidence supporting the SOR, and even in the unlikely event pressure was exerted upon Applicant to compromise classified information, he would resist it, and would report the incident to the proper authorities.

### **Paragraph 2 Guideline E (Personal Conduct)**

The evidence is clear that at the time Applicant completed the SCA, he had not formally and finally had a clearance denied or access authorization denied, suspended or revoked. Therefore, he was correct at the time that he completed the SCA, and he had no intention to furnish false information to the Government.

In the Adjudicative Guidelines for Personal Conduct, I conclude that no DC applies as the Appellant did not provided false and misleading information of relevant and material facts in the SCA.

### **FORMAL FINDINGS**

#### **Paragraph 1. Guideline B: FOR APPLICANT**

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

**Paragraph 2. Guideline E: FOR APPLICANT**

Subparagraph 2.a.: For Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

Martin H. Mogul

Administrative Judge